



# Oregon

Kate Brown, Governor

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**To: The Honorable Michael Dembrow, Chair  
Senate Committee on Environment and Natural Resources**



**Senate Bill 1511**  
**Shannon Hurn, Deputy Director for Fish and Wildlife Programs**  
**Ken Loffink, Fish Screening and Passage Program**  
**Oregon Department of Fish and Wildlife**

The Department of Fish and Wildlife (department) appreciates the opportunity to testify on Senate bill 1511. The department has no position on the bill. Senate bill 1511 directs the department to take over authorization of stream restoration activities in qualifying streams located within closed basins. A qualifying stream is incised or eroded, flows less than 1 cfs at least two months a year, has not had a healthy population of native, migratory fish for three years prior to authorization, and is incised or eroded to a bed elevation two feet or more below the floodplain.

The department is directed to undergo rulemaking to develop the criteria for assessing voluntary restoration projects on qualifying streams. Senate bill 1511 has provisions for fish passage that are mostly consistent with Fish Passage Law (ORS 509.585). However, the focus is on current native, migratory fish presence and does not have an allowance for historic fish presence. Senate bill 1511 does allow that if conditions improve, and native, migratory fish are found in the area after the project is developed, that the department can require actions by the landowner to address any fish passage impediments.

Stream restoration activities are currently regulated thru fill/removal permits authorized by the Department of State Lands. The department is consulted in the permit process and applies conditions (ex. in-water work periods) and reviews the design for fish passage compliance. Stream restoration requires oversight due to concerns with increasing water temperature or decreasing water quality, injecting sediment into waterways, impeding water flow, armoring streams and removing natural stream sinuosity, and/or causing damage to adjacent or downstream properties and infrastructure.

Similar to current permitting processes, if the department assumes the role of authorization early consultation will be critical to success. The department will need to be consulted prior to stream restoration activities to determine if the stream is qualifying. Flow measuring and fish presence surveys will likely be required, as no statewide, reach-by-reach inventory currently exists for either water flow or fish presence. If there is uncertainty about whether a stream meets the qualifying criteria, or if stream restoration activities occur before the landowner seeks authorization, the department recommends that Department of State Lands authority should supersede the provisions provided in Senate bill 1511.

Stream restoration activities have occurred regularly in arid environments of Oregon's closed basins. These restoration activities have been very beneficial to restoring ecological function and undoing the land use damage or causative action that occurred on the landscape previously. Stream restoration activities can result in improved habitat for fish and wildlife, while benefitting the landowner by reducing erosion, increasing wet meadow habitat, and restoring a more natural stream function. The economic benefit to landowners depends on their objectives and can be difficult to quantify.

Senate bill 1511 requires the department to submit a report on the ecological and economic benefits from stream restoration activities that were conducted on qualifying streams through this program. The only monitoring provision in the bill is that photo monitoring can be required of the participating landowner. The bill requires that any additional monitoring developed to assess ecological and economic benefits must to be funded by the State or another entity, but not the landowner. The department recommends clarifying what ecological and economic factors must be assessed in the report. This would assist the department in developing a cost assessment on monitoring needed to fulfill that reporting obligation in the bill.

Last, current Oregon revised statutes that govern land use practices and fill/removal activities clarify that the liability of those actions rests with the landowner. Senate bill 1511 does not similarly clarify this liability in the new language, and there are real concerns with actions impacting adjoining or adjacent property owners or impacting infrastructure downstream of the project (ex. culverts, roadways, bridges). Our recommendation would be to clarify this liability still exists and remains with the landowner.

Thank you for the opportunity to testify.

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